

Christopher C. Voigt  
Monique P. Voigt  
CROWLEY FLECK PLLP  
500 Transwestern Plaza II  
P. O. Box 2529  
Billings, MT 59103-2529  
Telephone: (406) 252-3441  
Facsimile: (406) 259-4159  
cvoigt@crowleyfleck.com  
mvoigt@crowleyfleck.com

Attorneys for Arch Insurance Company

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
HELENA DIVISION

CHADAM, INC. d/b/a K BAR L  
RANCH & MEDICINE SPRINGS,

Plaintiff,

vs.

ARCH INSURANCE COMPANY,

Defendant.

Cause No.:

**NOTICE OF REMOVAL**

Defendant Arch Insurance Company, (“AIC”), pursuant to 28 U.S.C. §§ 1441 and 1446, hereby gives notice to all interested parties that the above-captioned action is removed from the First Judicial District of the State of Montana, Lewis and Clark County, Civil Action No. BDV 2017-829, to the United States District Court for the District of Montana, Helena Division based on diversity of citizenship. The grounds

for the removal are as follows:

### **BACKGROUND**

1. On October 16, 2017, Plaintiff Chadam, Inc. d/b/a K Bar Ranch & Medicine Springs (“Chadam”) filed a Complaint and Demand for Jury Trial (“Complaint”) against AIC in the First Judicial District of the State of Montana, Lewis and Clark County, Civil Action No. BDV 2017-829 (“State Action”).
2. On October 27, 2017, the Summons and Complaint were served.
3. This Notice of Removal is timely filed with the Court pursuant to 28 U.S.C. § 1446(b) because it is filed within thirty (30) days after receipt of the initial pleading.

### **DIVERSITY OF CITIZENSHIP**

4. The United States District Court for the District of Montana has jurisdiction over the removed State Action pursuant to 28 U.S.C. § 1332(a). There is complete diversity of citizenship and the amount in controversy is reasonably believed to exceed the sum of \$75,000.00.
5. Chadam alleges in the Complaint that Chadam is a resident and citizen of the State of Montana. Complaint, attached hereto as Exhibit 1, ¶ 1.
6. Chadam alleges in the Complaint that AIC is organized under the laws of Delaware. Exhibit 1, ¶ 2.
7. AIC is a Missouri corporation with its principle places of business in

Jersey City, New Jersey, and as such is a citizen and resident of Missouri and New Jersey.

8. Therefore, complete diversity exists under 28 U.S.C. § 1332(a)(1) between Plaintiff and all Defendants.

### **AMOUNT IN CONTROVERSY**

9. The amount in controversy in this action is reasonably believed to exceed \$75,000.00 exclusive of interest and costs. The Complaint is the “initial pleading” under 28 U.S.C. § 1446(c)(2)(A) and seeks a money judgment, but does not contain a total demand for a specific amount. Exhibit 1, page 13, Prayer for Relief. The practice in the State of Montana “permits recovery of damages in excess of the amount demanded” within the meaning of 28 U.S.C. § 1446(c)(2)(A).

10. Therefore, this Notice of Removal “may assert the amount in controversy[.]” 28 U.S.C. § 1446(c)(2)(A). This Notice of Removal asserts the amount in controversy exceeds \$75,000.00 exclusive of interests and costs because Chadam seeks contract damages, prejudgment and post-judgment interest, punitive damages, and attorneys’ fees. All of the aforementioned information taken together forms an objectively reasonable basis for removal.

11. The Ninth Circuit Court of Appeals has held that punitive damages are properly included in a calculation of the amount in controversy for purposes of removal on diversity of citizenship grounds. *Matheson v. Progressive Specialty Ins.*

*Co.*, 319 F.3d 1089, 1091 (9th Cir. 2003).

12. Courts also include future attorneys' fees in a calculation of the amount in controversy for purposes of removal on diversity of citizenship grounds. *See, e.g., Feller v. Hartford Life & Acc. Ins. Co.*, 817 F. Supp. 2d 1097, 1101 (S.D. Iowa 2010).

13. Here, the amount of the alleged breach of contract, attorneys' fees, and claim for punitive damages show that the amount in controversy exceeds \$75,000.00. "[T]he amount-in-controversy allegation of a defendant seeking federal-court adjudication should be accepted when not contested by the plaintiff or questioned by the court." *Dart Cherokee Basin Operating Co., LLC v. Owens*, 135 S. Ct. 547, 550, 190 L. Ed. 2d 495 (2014).

14. Should Chadam or the Court question or contest AIC's amount-in-controversy allegation, AIC will present any "summary-judgement-type evidence relevant to the amount in controversy," *Matheson*, 319 F.3d at 1090, and will also consider any offer from Chadam for a stipulation that Chadam seeks less than \$75,000.00 in total.

15. Therefore, this Court has jurisdiction over this matter pursuant to 28 U.S.C. §1332 because this is an action where the amount in controversy exceeds the sum or value of \$75,000.00 and there is complete diversity of citizenship between Plaintiff and Defendant.

**REMAINING REQUIREMENTS**

16. Pursuant to 28 U.S.C. § 1446(d), AIC will promptly serve written notice of the filing of this Notice of Removal upon all other parties and will promptly file a copy of this Notice of Removal with the Clerk of Court for the Montana First Judicial District Court, Lewis and Clark County.

17. Pursuant to 28 U.S.C. § 1446(a), AIC files together with this Notice of Removal a copy of all process, pleadings, and orders served in this case, attached hereto as Exhibit 2. These attachments constitute all documents known by AIC to have been served in the case.

18. No defendant has appeared in the State Action.

19. No previous application has been made for the relief requested herein.

20. By filing this Notice of Removal, AIC does not waive any defenses that may be available to contest Chadam's allegations made in the Complaint.

WHEREFORE, AIC removes this case on the basis set forth above.

Dated this 27th day of November, 2017.

/s/ Christopher C. Voigt

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